

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

REVEREND BRIAN THOMAS	:	No. 4:05-cv-1630
	:	
Plaintiff,	:	
	:	Judge Jones
v.	:	
	:	
JUDGE ROBERT CONWAY,	:	
in his official and individual capacities.	:	
	:	
Defendant.	:	

ORDER

November 21, 2005

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On August 30, 2005, Petitioner Reverend Brian Thomas (“Petitioner”) filed a letter with the Clerk (doc. 5) which appeared to indicate that he desired to have the above captioned matter dismissed without prejudice. Due to the imprecise nature of the letter, we entered an Order on September 1, 2005 (doc. 6) allowing Petitioner ten (10) days to file objections to a dismissal of the action without prejudice. By November 8, 2005, Petitioner had filed no objections with this Court, and we entered an Order closing the case. (Rec. Doc. 14).

On November 16, 2005, Petitioner filed a Motion to Recall and Motion to Vacate Void Order [of November 8, 2005]. Petitioner claims that his letter of

August 30, 2005 (doc. 5) was not a request to dismiss the instant action, but rather withdrew his writ of habeas corpus. However, Petitioner failed to correct this Court's misconstrual of his letter (doc. 5) when prompted by this Court's Order of September 1, 2005. (Rec. Doc. 6).

Upon reconsideration by this Court of the letter (doc. 5), we construe it not to be a request to dismiss the instant action but find that the letter refers to a separate habeas corpus petition. Therefore, we shall vacate our Order (doc. 14) of November 8, 2005 and reinstate the instant action. We shall also reinstate the Motion to Dismiss (doc. 11) filed by the Honorable Robert J. Conway. Petitioner shall have fifteen (15) days from the date of this Order to file a brief in opposition to the Honorable Robert J. Conway's Motion to Dismiss.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This action is REINSTATED.
2. Defendant, the Honorable Robert J. Conway's, Motion to Dismiss (doc. 11) is REINSTATED.

3. Petitioner shall have fifteen (15) days from the entry of this Order to file a brief in opposition to the Motion to Dismiss (doc. 11).

s/ John E. Jones III
John E. Jones III
United States District Judge